

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1294 OF 2006

Dinkar Jagannath Dhanawade & ors. ..Petitioners

Versus

The State of Maharashtra & Ors. ..Respondents

Mr.H.S.Venegavkar for petitioners

Mrs.A.S.Pai, APP for State

Mr.V.V.Purwant for Respondent No.2

CORAM : J.N.PATEL &
SMT.ROSHAN DALVI, JJ.

DATE : 28TH AUGUST, 2006.

P.C.:

1. The petitioners have invoked the extraordinary jurisdiction of this Court seeking compounding of offence on the ground that they have amicably settled the matter. The Respondents were duly noticed in the matter, the Complainant Shri Shivaji Ramchandra

Lavangare, who is also represented by his advocate before this Court and filed an affidavit confirming the fact that they are compromising the matter and applied to the court of Sessions Satara where their Appeal is pending being Cri. Appeal No.80 of 2004. The learned Sessions Judge, Satara by his order dated 4.5.2006 rejected the application on the ground that the offence under Sections 143, 148, 323 r/w Section 149 of I.P.C. are non compoundable and all the three offences relates to public tranquillity. The conviction is not under Section 323 simplicitor, but it was conviction for offence under Section 149 r/w 323 of IPC. for which no separate application has been filed to compound, but this is a composite application for compounding all those.

2. We are not going into the facts of the case, but it would suffice to say that the petitioners who were chargesheeted before the Court of II Joint Judicial Magistrate, First Class Satara for having committed offences under Sections 147, 148, 149, 326 and 323 of the Indian Penal Code, in Regular Criminal Case No.183 of 2001. The Trial Court by his judgment and order dated 19.10.2004 found them guilty of having committed

offences punishable under Sections 143, 148 and 323 r/w 149 of IPC. They are acquitted of the charge for having committed offences punishable under Section 323 of IPC. The State has not preferred any appeal against this order but the petitioners have preferred Criminal Appeal No.80 of 2004 before the Court of Sessions Judge, Satara.

3. It is submitted by the learned counsel appearing for the petitioners that in view of the decision rendered by the Supreme Court in the case of **B.S.Joshi and ors. vs. State of Haryana & anr. (2003) 4 SCC 675**, the Supreme Court has held :-

"If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect

the powers under Section 482 of the Code."

The Supreme Court has also expressed by observing that "it is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences. They had approached the Court seeking quashing of FIR."

4. We have given our anxious consideration to the said decision and other decision of this Court in which the decision of Supreme Court of B.S.Joshi's case has been followed. The case at hand is as to whether the appellants can seek quashing of the FIR, further when the appellants are found guilty and convicted by the trial court and their appeal is pending. There is no controversy over the matter that Section 148 of IPC is non compoundable, and therefore, the learned Court of Sessions Judge was right in rejecting the application.

5. In view of the fact that the parties have compromised the matter and if they are the first offenders, in such an eventuality the appellate court can always resort to the provisions of the Probation of Offenders Act, which remedy is available to the

petitioners. Therefore, we dispose of this writ petition with a direction to the Court of Sessions to consider the case of the Petitioners under the provisions of Sections 3 and 4 of the Probation of Offenders Act, 1956. The Petition stands disposed of.

6. We make it clear that in so far as the order of disposing the petition is concerned is passed in the peculiar facts and circumstances of the case, it would not be considered as the precedent laid down by this court in application to other cases.

(J.N.Patel, J.)

(Smt.Roshan Dalvi, J.)